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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BENJAMIN J. PARKER, SHANE R. WERNER,
CHARLES DIAZ and TERRY M. FREDERICK

Appeal 2009-001318
Application 10/034,012
Technology Center 2400

Decided: January 13, 2010

Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1, 3-12, 14, 15, and 17. Claims 2, 13, and 16 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

I. STATEMENT OF THE CASE

The Invention

The Appellants invented a method and central server system for detecting the presence of firewalls for each user of the system in communication channels and dynamically adjusting the characteristics of the user to establish direct point-to-point communication between the users (Spec. 4).

The Illustrative Claim

> Claim 12. A central server coupled to an internetwork providing a real-time, network interconnection service for enabling at least two users to exchange network packets via said internetwork, wherein each user is addressable within said internetwork at a respective global address, and wherein some users of said internetwork are connected to said internetwork via a respective network address translation (NAT) firewall, said central server comprising a programming sequence for:
>
> maintaining a database of registered users, said database including respective global addresses corresponding to said registered users;
>
> receiving a call request from a calling user to establish a connection to exchange network packets with a called user, at least said called user being a registered user;

detecting whether a respective NAT firewall is in place between said called user and said internetwork;

if a respective NAT firewall is not in place between said called user and said internetwork, then transmitting said called user's respective global address to said calling user so that said calling user can establish a network session for said connection with said called user by transmitting directly to said called user's respective global address; and

if a respective NAT firewall is detected between said called user and said internetwork, then detecting whether a respective NAT firewall is in place between said calling user and said internetwork, and if a respective NAT firewall is not in place between said calling user and said internetwork, then transmitting said calling user's respective global address to said called user and said called user establishing a network session for said connection with said calling user by transmitting directly to said calling user's respective global address.

The References

The references relied upon by the Examiner as evidence in rejecting the claims on appeal are as follows:

Liu	US 6,993,012 B2	Jan. 31, 2006
Sultan	US 7,058,973 B1	Jun. 6, 2006
Xu	US 2002/0114322 A1	Aug. 22, 2002

The Rejections

Claims 1, 3-9, 12, 14, 15, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Xu in view of Sultan.

Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Xu in view of Sultan, and further in view of Liu.

II. ISSUE

Have Appellants shown that the Examiner erred in finding that the combination of Xu and Sultan teaches or fairly suggests the limitations that one of parties (the calling user or the called user) that has a Network Address Translation (NAT) firewall between the parties and the Internet establishes network session by transmitting directly the global address to the party without NAT firewall between the party and Internet, as claimed in claim 12?

III. PRINCIPLES OF LAW

Prima Facie Case of Unpatentability

The allocation of burden requires that the United States Patent and Trademark Office (USPTO) produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)). Appellant has the opportunity on appeal to the Board of Patent Appeals and Interferences to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (citing *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; and

(3) the level of skill in the art. *See Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of doing, the Examiner must make the factual determinations set forth in *Graham*, 383 U.S. at 17. "[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If the Examiner's burden is met, the burden then shifts to Appellant(s) to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See id.*

IV. FINDINGS OF FACT

The following findings of fact (FFs) are supported by a preponderance of the evidence.

1. Xu discloses a communication system that utilizes a Call Control Manager (CCM) server as a relay for all data between two clients even one of client 30(h) directly connected to Internet without firewall, for example:

> [A]ssume a client, client 30(h) for example, with a public IP address uses a first port for sending media datagrams and a second port for receiving media datagrams. As such, the RTP channel provided to the CCM server 18 will include the public IP address and the second port. However, the extracted RTP channel will include the public IP address and the first port. Because the IP address match, the CCM server will establish the client

> sending channel as the RTP channel provided to the CCM server 18 such that the client will be able to receive media datagrams on the second port.

(Xu, ¶[0094].)

2. The relevant teachings of Sultan is only cumulative to the teachings in Xu and merely is exemplary of global address used in NAT firewall (Ans. 5).

3. Xu also discloses an embodiment of figure 2a that both calling user 30(a) and called user 30(d) are behind NAT firewall, and the CCM server relays the media datagram between the calling user 30(a) and the called user 30(d) (Xu, Fig. 2a; ¶¶ [0051]-[0064]).

4. Xu further discloses the embodiments of figures 2b and 2c that one party (either calling user or called user) has not behind NAT firewall such as the calling user 30(g) or the called user 30(h), and the CCM server, however, still relays the media datagram between the parties (Xu, Figs. 2b & 2c; ¶¶ [0094]-[0097]).

V. ANALYSIS

35 U.S.C. § 103(a) rejection

With respect to claim 12, the Appellants contend that:

> Xu et al continues to relay datagrams between the clients even when there is no NAT firewall at one of the clients. Since datagrams are always relayed by an intermediary device, there is no communication directly between clients, . . .
>
> It is readily apparent from Figures 2a, 2b, and 2c that all datagrams to or from a client are exchanged with either a proxy server or the [CCM] server. Xu et al. fails to exchange

> datagrams using direct addressing between the clients, which is precisely the advantage that is achieved by the present invention.

(App. Br. 8.)

The Examiner maintains that:

> Appellant's claim language does not preclude the teaching and embodiments (Figures 2a-2c) of *Xu et al* for exchanging data from a caller to a callee via a server since it is the server that performs the steps of detection to determine if a client is behind a firewall and then establishes connection with another client.

(Ans. 8.)

We disagree with the Examiner's findings. The claim language expressly mentions that the party with NAT firewalls "establish a network session for said connection with," the party without firewalls "by transmitting directly to" the global address of the party without NAT firewalls. We find Xu teaches utilizing CCM server as a relay for all data between two clients regardless whether the clients have NAT firewalls (FF 1). Figure 2a of Xu teaches an embodiment of both parties having NAT firewalls and the CCM server relays the datagram between them (FF 3). This embodiment does not read on the disputed claim limitations. Even though embodiments in figures 2b and 2c describe that one of parties (the calling user or the called user) are not behind a NAT firewall, it is clear to us that the CCM server still relays the datagram between both parties (FF 4). Thus, those embodiments in figures 2b and 2c of Xu also do not read on the disputed claim limitations. We also find the cited reference of Sultan merely teaches the feature of the global address of a NAT (FF 2). We, therefore,

find the Examiner's position is untenable. The Examiner has not shown, and we do not readily find that the combination of Xu and Sultan teaches or fairly suggests the claimed limitations.

Because we agree with at least one of the Appellants' contentions, we cannot sustain the obviousness rejection of claim 12.

Claims 1 and 15 contains the similar argued limitations as those of claim 1. Accordingly, we can not sustain the obviousness rejection of claims 1, 12, and 15.

The rejection of dependent claims 3-11, 14, and 17 contains the same deficiencies.

Accordingly, we reverse the obviousness rejection of claims 1, 3-12, 14, 15, and 17.

VI. CONCLUSION

We conclude that the Appellants have shown that the Examiner erred in finding that the combination of Xu and Sultan discloses the limitations of one of parties (the calling user or the called user) that has a NAT firewall between the parties and the Internet establishes network session by transmitting directly the global address to the party without a NAT firewall between and Internet, as claimed in claim 12?

VII. DECISION

We reverse the Examiner's rejections of claims 1, 3-12, 14, 15, and 17.

REVERSED

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